FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

No. 1D21-3410

CURTIS JOHN PROVEAUX, SR.,
Former Husband,

Appellant,

v.

BETTY ANN PROVEAUX, Former
Wife,

Appellee.

On appeal from the Circuit Court for Columbia County.
Melissa G. Olin, Judge.

March 29, 2023

PER CURIAM.

Curtis Proveaux ("Former Husband") appeals the denial of his petition to modify or terminate alimony. Former Husband alleged that Betty Ann Proveaux ("Former Wife") is in a supportive relationship with her long-term boyfriend that meets the requirements of section 61.14(1)(b), Florida Statutes (2021). The trial court denied Former Husband's petition after concluding Former Wife and her live-in boyfriend are not engaged in a supportive relationship. Because the trial court erred in its

application of the statute and abused its discretion, we reverse and remand for further proceedings consistent with this opinion.[1]

Section 61.14, Florida Statutes

Section 61.14(1)(b)1. authorizes the trial court to terminate or reduce alimony based on a finding that a former spouse receiving alimony is in a supportive relationship with another person. While the statute does not define a supportive relationship, it does explain that "relationships do exist that provide economic support equivalent to a marriage and that alimony terminable on remarriage may be reduced or terminated upon the establishment of equivalent equitable circumstances as described in this paragraph." § 61.14(1)(b)3., Fla. Stat. The statute includes a non-exhaustive list of factors that "elicit the nature and extent of the relationship in question." § 61.14(1)(b)2., Fla. Stat. Those factors are:

> a. The extent to which the obligee and the other person have held themselves out as a married couple by engaging in conduct such as using the same last name, using a common mailing address, referring to each other in terms such as "my husband" or "my wife," or otherwise conducting themselves in a manner that evidences a permanent supportive relationship.
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> b. The period of time that the obligee has resided with the other person in a permanent place of abode.
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> c. The extent to which the obligee and the other person have pooled their assets or income or otherwise exhibited financial interdependence.

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[1] In his second issue, Former Husband argues that the trial court should have denied Former Wife's motion for attorney's fees and costs. However, the trial court's order on appeal neither decides entitlement nor determines an amount of fees. Therefore, that issue is not properly before this Court.

d. The extent to which the obligee or the other person has supported the other, in whole or in part.

e. The extent to which the obligee or the other person has performed valuable services for the other.

f. The extent to which the obligee or the other person has performed valuable services for the other's company or employer.

g. Whether the obligee and the other person have worked together to create or enhance anything of value.

h. Whether the obligee and the other person have jointly contributed to the purchase of any real or personal property.

i. Evidence in support of a claim that the obligee and the other person have an express agreement regarding property sharing or support.

j. Evidence in support of a claim that the obligee and the other person have an implied agreement regarding property sharing or support.

k. Whether the obligee and the other person have provided support to the children of one another, regardless of any legal duty to do so.

§ 61.14(1)(b)2.a.–k., Fla. Stat.

The Evidence

The parties married in 1975 and divorced in 1995. As part of the final judgment of dissolution, Former Husband was required to make permanent weekly alimony payments to Former Wife. Former Husband has now paid alimony to Former Wife for longer than the couple was married. In 2020, Former Husband petitioned to modify his alimony payments because he alleged Former Wife was in a supportive relationship and that she no longer needed alimony.

A bench trial was held on Former Husband's petition. The evidence established that Former Wife and her boyfriend, Michael Allen, had been involved in a relationship for at least fourteen years and had been cohabitating since 2009. They live in a home purchased jointly. They previously lived in Allen's former home, but Allen testified that Former Wife had difficulty getting to the upstairs level of the home because of health problems with her knee. Allen contributed $40,000 to the down payment and pays $900 per month on the mortgage. Former Wife contributed $20,000 to the down payment and pays $600 per month on the mortgage. Former Wife and Allen have made upgrades to the new residence, including purchasing furniture and installing a deck. Former Wife also owns the former marital home, which she now rents out for $1,000 per month. Former Wife uses a P.O. box for some of her personal correspondence, but her driver's license lists her shared residence with Allen. Allen testified that Former Wife receives mail at their shared address. Among other things, she receives credit card statements at the shared address.

They share household chores, household expenses, and grocery expenses. When they go out to eat, they take turns buying meals. Allen testified that they do not "keep track of who buys what" for expenses like groceries. Former Wife and Allen maintain separate bank accounts. Though they have been together for at least fourteen years, co-own their shared residence, and do not intend to separate, both Former Wife and Allen testified that they evaluate their relationship on a "day-to-day" basis.

The Trial Court's Order

After considering this evidence, the trial court found that a supportive relationship did not exist between Former Wife and Allen. The trial court also concluded that alimony should not be reduced or terminated because, regardless of the supportive relationship determination, Former Wife had a need for alimony and Former Husband had the ability to pay. The trial court determined that Former Wife and Allen have not held themselves out as a married couple given that they have separate last names, sometimes use a separate post office box for mail, and maintain separate phone numbers and phone bills. The trial court also

found that Former Wife and Allen did not exhibit financial interdependence, despite the joint purchase of a home, because they maintained separate checking accounts and split shared expenses, among other things. The trial court concluded that the support between the couple and the valuable services performed by them did not weigh heavily in favor of a supportive relationship finding. The trial court was not convinced that the financial allocation for the house payments, including Former Wife's smaller down payment and monthly payments, constituted financial support by Allen.

The trial court also made findings about Former Wife's financial needs. Former Wife's monthly expenses total $4,500. Her total income, including alimony, totals $3,825. The court rejected Former Husband's argument that Former Wife no longer needed alimony because her net worth had increased as a result of funds from her retirement program.

In finding that no supportive relationship exists, the trial court relied on *Overton v. Overton*, 92 So. 3d 253 (Fla. 1st DCA 2012) (*Overton II*)[2] and *French v. French,* 4 So. 3d 5 (Fla. 4th DCA 2009). The order concludes that a supportive relationship does not exist "if there is no significant financial benefit conferred" and that the "First DCA ruled that a 'supportive relationship' is one that takes the financial place of a marriage and decreases the need for alimony." But this is a quote from *French* with which *Overton II* certified conflict. *Overton*, 92 So. 3d at 255. Neither the controlling statute nor *Overton II* require "a significant financial benefit" to be conferred before a supportive relationship can be found.

Former Husband contends that the trial court erred in finding that a supportive relationship did not exist. We agree.

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[2] The trial court cited *Overton v. Overton*, 34 So. 3d 759 (Fla. 1st DCA 2010) (*Overton I*) rather than *Overton II*. This appears to be an oversight.

Legal Analysis

Standard of Review

"[R]eview of a trial court's decision under section 61.14(1)(b) is a mixed question of law and fact that requires a mixed standard of review." *Murphy v. Murphy*, 201 So. 3d 18, 21 (Fla. 3d DCA 2013). "The trial court must first make factual findings based on the evidence presented and then determine whether the facts establish the existence of a 'supportive relationship,' which requires an interpretation of the statute and an application of the law to the facts." *Id.* at 21–22. Appellate courts review "factual findings to determine whether they are supported by competent substantial evidence; the trial court's interpretation and application of the law should be reviewed de novo; and the exercise of the trial court's discretion should be reviewed for abuse of discretion." *Id.* at 22; *see also Buxton v. Buxton*, 963 So. 2d 950, 953 (Fla. 2d DCA 2007).

Supportive Relationship Determination

The relationship between Former Wife and Allen meets many of the factors set out in section 61.14(1)(b)2. It is not necessary for each of the factors to be met to find a supportive relationship. The evidence shows that Former Wife and Allen had been in a committed, serious relationship for at least fourteen years, and had been living together since before 2009. Cohabitation for more than a decade is a significant period. They have jointly purchased property and pooled their assets. The joint purchase of their shared home was for the benefit of Former Wife who had knee problems.

After making its factual findings, the trial court concluded, as a matter of law, that they were insufficient to show that the parties had an express or implied agreement regarding property sharing as contemplated by section 61.14(1)(b)2.i.–j. This was error. Former Wife and Allen purchased their property as joint tenants with a right of survivorship, meaning that the house will pass to the other owner in the event of either's death. The estimated value of the house is $290,000. This is an agreement regarding property sharing which plainly satisfies section 61.14(1)(b)2.i.–j.

Former Wife and Allen are a committed couple and have shared the same home for years. Former Wife and Allen also share household duties, which are a valuable service. *See French*, 4 So. 3d at 8; *Pill v. Pill*, 583 So. 2d 1114, 1114 (Fla. 5th DCA 1991) (holding that live-in boyfriend's performance of yard work, pool cleaning, and house maintenance had an economic value that entitled ex-husband to a reduction in alimony payments). They also share household and grocery expenses.

After making its factual findings, the trial court erred in applying section 61.14 to those facts. The trial court's factual findings demonstrate, as a matter of law, that Allen and Former Wife were in a supportive relationship.

Modification or Termination of Alimony

The next question is whether the trial court abused its discretion by denying Former Husband's petition to modify alimony. The trial court found that "even if the Court were to conclude that a supportive relationship existed, which it does not, the greater weight of the evidence supports the conclusion that the Former Wife still has a need for alimony and the Former Husband has the ability to pay."

To modify alimony under section 61.14(1)(a), the trial court must determine that: (1) there was a substantial change in circumstances; (2) the change was not contemplated at the time of the final judgment of dissolution; and (3) the change is sufficient, material, involuntary, and permanent in nature. *Pimm v. Pimm,* 601 So. 2d 534, 536 (Fla. 1992). "The concept of supportive relationship involves—at its core—a change in circumstances." *King v. King*, 82 So. 3d 1124, 1131 (Fla. 2d DCA 2012).

It can be an abuse of discretion for a trial court to refuse to modify or terminate alimony where there is a supportive relationship or analogous circumstance. *See Zeballos v. Zeballos*, 951 So. 2d 972, 975 (Fla. 4th DCA 2007) (finding that the trial court abused its discretion by not terminating alimony where former husband's impending retirement and former wife's long-term support by another person eliminated his ability to pay and

her need); *Klokow v. Klokow*, 323 So. 3d 817, 823–24 (Fla. 5th DCA 2021) (holding that the trial court erred by failing to address how contributions from the former wife's new paramour affected her continued need for alimony).

The trial court here expressly stated that the greater weight of the evidence demonstrated Former Wife still had a need for alimony, regardless of whether a supportive relationship existed. However, once a court has made a finding of a supportive relationship, "the burden of proof of the continued need for alimony shift[s] to the former [spouse]." *Gregory v. Gregory*, 128 So. 3d 926, 927 (Fla. 5th DCA 2013). Former Wife did not adequately prove that she had a continued need for alimony. Her financial affidavit was outdated, and she testified that her monthly medical costs had decreased from $750 to $177. The court also did not properly consider Former Wife's access to significant additional retirement funds, totaling at least $119,000, or Allen's "valuable, non-economic services to the former wife." *Id.* at 927. On remand, the trial court must reconsider Former Wife's continued need for alimony in light of these factors.

Conclusion

The trial court erred in its application of section 61.14 to its factual findings. Former Wife and Allen's long-term romantic relationship, shared residence since at least 2009, joint purchase of property, holding such property as joint tenants with the right of survivorship, and shared household expenses and obligations, demonstrated a supportive relationship as a matter of law. We remand for the trial court to reconsider Former Wife's continued need for alimony and, if her need has changed, a reasonable reduction or termination of Former Husband's alimony obligation.

REVERSED and REMANDED.

RAY, NORDBY, and LONG, JJ., concur.

Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331.

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